IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 629 of 2005
To
FIRST APPEAL No. 631 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)
Versus
LILABEN WD/O VISHABHAI SHANKARBHAI - Defendant(s)

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Appearance :
Mr.S.S.Shah,learned GP for the appellants in First Appeal Nos.629 and 630 of 2005.
Mr.L.R.Pujari,learned AGP for the appellants in First Appeal No.631 of 2005.
MR GM AMIN for the claimants

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/10/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. The above numbered appeals filed under Section 54 of the Land Acquisition Act, 1894 (“The Act” for short) read with Section 96 of the Code of Civil Procedure,1908 are directed against the common judgment and award dated February 19,2004 rendered by the learned Civil Judge (SD), Gandhinagar in L.A.Q.Case No.677/98 to LAQ Case No.679/98 by which the claimants are awarded additional compensation at the rate of Rs.160/- per sq.mt., over and above compensation awarded to them by the Land Acquisition Officer at the rate of Rs.31/- per sq.mt. vide his award dated March 18, 1994 for their acquired lands.

2. A proposal was received by the State Government to acquire the lands of village Valad, Taluka and District – Gandhinagar for the public purpose of

Dhanap Muthiya Kans Yojana. On perusal of the said proposal, the State Government was satisfied that the lands of village Valad were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued, which was published in the Official Gazette on December 18,1992. The land owners were served with notices as required under Section 4(1) of the Act. They opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Valad, which were specified in the Notification published under Section 4(1) of the Act in the Official Gazette on December 18,1992 were needed for public purpose of Dhanap Muthiya Kans Yojana. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on March 16,1993. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land

Acquisition Officer and claimed compensation at the rate of Rs.500/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated March 18,1994 offered compensation to the claimants at the rate of Rs.31/- per sq.mt. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Gandhinagar, where they were numbered as L.A.Q.Case No.677/98 to LAQ Case No.679/98.

3. On behalf of the claimants (1)witness Kashibhai Ishwarbhai was examined at Exh.14, (2) witness Mohanbhai Khengarbhai Desai was examined at Exh.18 and, (3) witness Vinodbhai Shankarbhai was examined at Exh.23. The witnesses examined on behalf of the claimants produced certain documents in support of the claim that the claimants were entitled to compensation at the rate of Rs.500/- per sq.mt. On

behalf of the acquiring body (1) witness Patel Mahendrakumar Lakhabhai was examined at Exh.28, and (2) witness Mohammadhussain Adambhai was examined at Exh.30

4. The reference Court noticed that the sale deeds relied upon by the claimants were of the year 1999 and 2000 and, therefore, not relevant for the purpose of determining market value of the lands acquired in the instant case pursuant to publication of notification under Section 4(1) of the Act on December 18, 1992. However,the learned Judge was of the opinion that the grant of land by the Collector to Valad Dud Ulpadak Sahakari Mandali Ltd. On September 24,99 was a relevant piece of evidence for the purpose of determining market value of the lands acquired in the instant case, which indicated that the land was granted by the Collector at the rate of Rs.371.50 Ps.per sq.mt. and, therefore, the claimants would be entitled to additional compensation at the rate of Rs.160/- per sq.mt. In view of the said conclusion, the learned Judge has awarded additional compensation to the claimants at the rate of Rs.160/- per sq.mt. by impugned judgment and award dated February 19,2006, giving rise to the above numbered

appeals.

5. This Court has heard Mr.S.S.Shah,learned G.P. with Mr.L.R.Pujari, learned AGP for the appellants and Mr.G.M.Amin, learned counsel for the claimants in each appeal at length and in great detail. This court has also considered the oral as well as documentary evidence adduced by the parties before the Reference Court.

6. It may be mentioned that the claimants had relied upon following sale deeds to substantiate their claim for enhanced compensation:

(1)Sale deed Exh.37 dated September 30,1998 for land admeasuring 75 Sq.mts. sold by witness Kashibhai Ishwarbhai to Budhaji Khodaji Thakore for a sum of Rs.22,875/-.

(2)Sale deed Exh.38 dated July 29,1999 executed by witness Kashibhai Ishwarbhai to Laxmanbhai Mafatbhai relating land admeasuring 103 sq.mts. for a sum of Rs.38,400/-.

(3)Sale deed Exh.39 dated February 28,2000 executed

by witness Kashibhai Ishwarbhai to Ashwinbhai Mafatbhai relating to land admeasuring 93.02 sq.mts. for a sum of Rs.41,348/-.

7. It may be mentioned that out of the above referred to 3 sale deeds, one sale deed was executed in the year 1998, whereas second one was executed in the year 1999 and third was executed in the year 2000. Therefore, they were rightly not relied upon by the Reference Court for the purpose of determining market value of the lands, which were acquired in the instant case pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on December 18,1992. On the same reasoning, the grant of land by the Collector which was effected in favour of Valad Dud Ulpadak Sahakari Mandali Ltd. on September 24,1999 produced at Exh.43 could not have been relied upon for the purpose of determining market value of the lands acquired in the instant case. It is well settled that the prices paid within a reasonable time in bonafide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages can be taken into consideration while determining the market value of the land

subsequently acquired. It is true that in certain cases post notification sales also can be taken into consideration but when the time gap between publication of notification issued under Section 4(1) of the Act and the sale deeds is more than 5 years, it would not be prudent for the court to rely upon the sale deeds for the purpose of determining market value of the lands at the date of the notification under Section 4(1) of the Act. On the facts and in the circumstances of the case, this court is of the firm opinion that the reference court was not justified at all in placing reliance on Exh.43 dated September 24,1999 for the purpose of coming to the conclusion that the claimants were entitled to additional compensation at the rate of Rs.160/- per sq.mt. for their acquired lands. The said finding is, therefore, liable to be set aside.

8. However, the record shows that Mr.Siraj Gori, learned AGP, who had earlier appeared in these matters had placed on record a copy of the judgment dated April 3,1998 delivered by the Division Bench of this Court in First Appeal Nos.2481 to 2507 of 1997 regarding this very village and had submitted that these matters are squarely covered in favour of the

appellants by the said judgment. In view of the said statement made by Mr.Siraj Gori,learned AGP, the appeals were ordered to be admitted. Therefore, merely because Exh.43 is not found to be relevant for the purpose of considering the question whether the claimants would not be entitled to additional compensation at the rate of Rs.160/- per sq.mt., the claim made by the claimants for enhanced compensation cannot be straightaway dismissed, but will have to be ascertained in the light of what is ruled by this court in First Appeal Nos.2481 to 2507 of 1997. The learned AGP has produced a simple copy of the judgment dated April 3,1998 rendered by the Division Bench comprising Y.B.Bhatt and C.K.Bhuj,JJ in First Appeal Nos.2481 to 2507 of 1997 for perusal of this court. It indicates that agricultural lands from village Valad, Taluka and District Gandhinagar were acquired for the public purpose pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on January 29, 1987. Therein the Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.4/- per sq.mt. for irrigated land and Rs.3/- per sq.mt. for non-irrigated land. The claimants had sought references and the Reference Court had awarded

compensation to the claimants at the rate of Rs.71.50 Ps. per sq.mt. for irrigated land and Rs.70/- per sq.mt. for non-irrigated land. The said judgment also indicates that the Reference Court in that case had relied upon previous award of the Reference Court relating to lands of villages Karai and Limbadiya, which were produced at Exh.59 and Exh.60 respectively and that those awards produced at Exh.59 and Exh.60 were challenged before the Supreme Court in Civil Appeal No.923/98 to 967/98 wherein the Supreme Court had awarded compensation to the claimants at the rate of Rs.53/- per sq.mt. by judgment dated February 13,1998. The Division Bench while deciding first Appeal Nos.2481 to 2507 of 1997 took notice of the decision of the Supreme Court dated February 13,1998 rendered in Civil Appeal No.923 to 967 of 1998 and ultimately held by judgment dated April 3,1998 that the claimants, whose lands were acquired from village Valad, Taluka and District Gandhinagar would be entitled to compensation at the rate of Rs.53/- per sq.mt. This court finds that the judgment dated April 3,1998 rendered by the Division Bench of this Court in First Appeal Nos.2481 to 2507 of 1997 relating to the lands of village Valad itself is relevant for the purpose of deciding market value of the lands

acquired in the instant case pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on December 18,1992. In the earlier case, notification under Section 4(1) of the Act was published in the Official Gazette on January 29,1987 and in view of time gap of 5 years the claimants would be entitled to reasonable rise in price of land at the rate of 10% per annum. If reasonable rise in price at the rate of 10% per annum is granted, the claimants would be entitled to compensation at the rate of Rs.79.50 Ps. per sq.mt., which should be and is rounded up to Rs.80/- per sq.mt. Thus, the claimants in all would be entitled to compensation at the rate of Rs.80/- per sq.mt. and not at the ate of Rs.191/- per sq.mt. as awarded by the Reference Court. To the said extend, the award challenged in the instant appeals will have to be modified.

9. For the foregoing reasons, all the appeals succeed. The impugned judgment and award dated February 19,2004 rendered by the Civil Judge(SD), Gandhinagar in L.A.Q.Case No.677 to 679 of 1998 awarding compensation to the claimants at the rate of Rs.191/- per sq.mt. is hereby modified and it is

held that the claimants would be entitled to compensation at the rate of Rs.80/- per sq.mt. for their acquired lands. The appeals stand accordingly allowed. There shall be no orders as to costs.

The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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